



Annual Ethics Training - 2009

**Pentagon Training for All
DoD personnel, including
OSD and All Military
Services**

**Jointly Prepared &
Presented**

[TOPICS]

- Financial Conflicts of Interest
- Personal Conflicts of Interest or Impartiality
- Misuse of Government Resources
- Gifts from Outside Sources
 - Widely Attended Gatherings
- Seeking & Post-Government Employment Restrictions

GOVERNING AUTHORITIES

- Executive Order – 14 Principles of the Standards of Conduct
- Ethics in Government Act, as amended.
- 18 U.S.C. §§ 201-209
- 5 C.F.R., Part 2635
- DoD 5500.7-R, Joint Ethics Regulation

[TAKE AWAYS]

- When in doubt about the rules, consult the appropriate ethics official, before taking any action.
- Avoid even raising the appearance of a conflict of interest or ethical failure.
- Follow advice of ethics officials—don't assume other employees received appropriate guidance.

[14 Principles]

- 1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- 2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- 3) Employees shall not engage in financial transactions using nonpublic government information or allow the improper use of such information to further any private interest.

[14 Principles]

- 4) An employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties (except as specifically permitted).
- 5) Employees shall put forth honest effort in the performance of their duties.

[14 Principles]

- 6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the government.
- 7) Employees shall not use public office for private gain.
- 8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

[14 Principles]

- 9) Employees shall protect and conserve federal property and shall not use it for other than authorized activities.
- 10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with their official government duties and responsibilities.

[14 Principles]

- 11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
- 12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those that are imposed by law (such as paying their federal, state, or local taxes).

[14 Principles]

- 13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
- 14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the Standards of Ethical Conduct for Employees of the Executive Branch.

[Financial Conflict of Interest]

RULE: It is a crime for you to participate personally and substantially as a Government officer or employee in a particular matter which will affect your financial interest or those imputed to you.

18 U.S.C. § 208

- **Imputed Interests:**

- Your spouse
- Minor child
- General partners,
- Any organization for which you are an officer, director, trustee, general partner, or employee, or
- Any individual or organization with whom you are negotiating or have an arrangement for future employment.

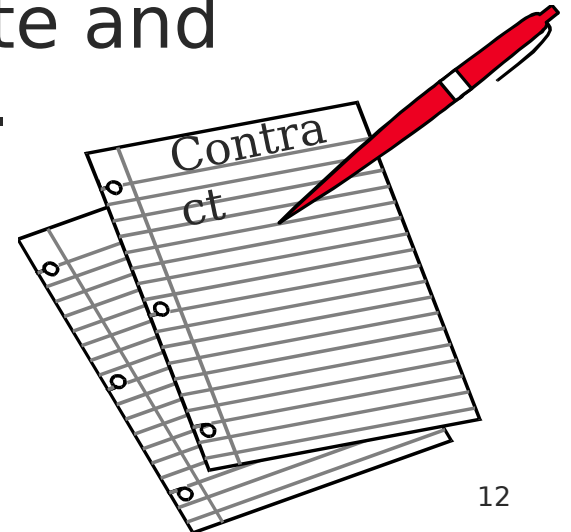
[Financial Conflict of Interest]

“Particular Matter”

- Something that involves deliberation, recommendation, decision, or action, and
- that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

E.g.,

Contract Claim
Grant Funding
Application



[Financial Conflict of Interest]

“Personal and Substantial”

- **“Personally”** means directly, and includes the participation of a subordinate when actually directed by you.
- **“Substantially”** means significant involvement in a critical step in the process.
 - Participation in decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while an officer or employee.
 - More than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

[Financial Conflict of Interest]

Conflict Impact: Where a financial conflict exists, **recusal** is required, unless one of the following remedies applies:

- **Exemption** for financial interest in a particular matter where interest is:
 - Any non-sector diversified mutual funds
 - \$15,000 or less in all publicly traded companies involved
 - \$25,000 or less in interest in a nonparty or matter of general applicability
 - \$50,000 or less in a sector fund (aggregates similar stocks)
- **Waiver** – by appointing official, after consultation with ethics official and coordination with the Office of Government Ethics.
- **Divestiture** – as a last resort, do **not** sell before you speak to an ethics official first.

Personal Conflict of Interest

Rule: It is a regulatory requirement that you not act unless you can be **impartial**.

Impact: You should **disqualify** yourself from participation

- Where a particular matter involving specific parties
- is likely to have a **direct and predictable** effect,
- on financial interests of
- a member of your household or a person with whom you have a **covered relationship**, **AND**
- a reasonable person with knowledge of the relevant circumstances would question your impartiality.

Personal Conflict of Interest

Impartiality - (cont'd):

- **"Covered Relationship"** includes:
 - Persons or organizations in which you have or seek a business, contractual, or other financial relationship;
 - Members of household or relatives with whom you have a close personal relationship;
 - Persons or organizations in which your spouse, parents or dependent child serves or seeks employment or other financial relationship;
 - Organizations in which you served as officer, director, agent, consultant, or employee within last year; or
 - Organizations in which you are an active participant.

[Gifts From Outside Source]

RULE: You may not directly or indirectly solicit or accept a gift given:

- by a prohibited source; or
- because of your official position.

5 C.F.R. § 2635.202(a)



Note: Additional restrictions apply to political appointees who signed the Ethics Pledge (E.O. 13940)

[Gifts From Outside Source]

Who is a Prohibited Source?

- Any person or entity seeking official action by the Agency;
- Any person or entity who does business or wants to do business with the Agency;
- Any person or entity who conducts activities regulated by the Agency;

(cont'd)

[Gifts From Outside Source]

Who is a Prohibited Source?

- Any person or entity who has interests which may be affected by your official duties; OR
- An organization a majority of whose members are described above.

E.g.,

DoD contractors Charitable
Organizations
Spousal Clubs FFRDCs

[Gifts From Outside Source]

- “**Gift**” is defined as an item of monetary value, including any gratuity, favor, service, discount, entertainment, or hospitality.
- Not a gift:
 - loans or discounts available to the general public
 - greeting cards and plaques of little intrinsic value
 - modest food and refreshments, free and donuts, not a



Gift From Outside Source

(Exceptions)

Common Examples of Acceptable Gifts:

- Unsolicited gifts from a prohibited source worth \$20 or less/source/occasion (\$50 max per year)—never cash.
- Gifts based on personal relationship (family/friend)
- Based solely on your spouse's employment

Note: Appearance issues may still mitigate against acceptance



[Gift From Outside Source]

(Exceptions)

Examples of Acceptable Gifts:

(cont'd)

- Social invitations from other than prohibited sources
- Gifts from Foreign Governments
- “Widely Attended Gatherings”

Note: Appearance issues may still mitigate against acceptance



[Gift From Outside Source]

(Exceptions)

Widely Attended Gathering (WAGs):

is defined as a gathering expected to have a large number of persons in attendance, representing diverse views or interests.

E.g., if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter.

[Gift From Outside Source]

(Exceptions)

Widely Attended Gatherings (WAGs): You may attend a WAG in your ***personal*** capacity, even when the invitation is from a prohibited source or given because of your official position, but ***only if***:

- The invitation was unsolicited, and
- Your ***supervisor*** determines DoD has a specific interest in ***your*** attendance (because it furthers your office mission)
- Use of Government transportation is prohibited.

Note: The WAG exception is generally not available for political appointees who have

[Gift From Outside Source]

- You are under no obligation to accept a gift
- It is never inappropriate to decline a gift—except from a foreign dignitary.
- Acceptance of improper gifts can usually be remedied if returned immediately.
- Where you not are permitted to accept, you may be able to pay for the item.
- For proper procedures and guidance, contact an ethics official.

[Gifts Between Employees]

Rules: You may not generally accept a gift from:

- a subordinate
- a lower-paid employee



Conversely you may not generally give a gift to your superior

Why: To avoid the appearance issues, and so employees do not feel pressure to provide gifts to their supervisor.

[Gifts Between Employees]

Exceptions:

- When gifts are traditionally given, items (never cash) of \$10 or less per occasion (e.g., birthday) – total, not per person
- Office refreshments
- Personal hospitality
- Special, infrequent occasions (e.g., retirement)

Gifts Between Employees

Remember: For group gifts on special infrequent occasions:

- Supervisors should **NEVER** coerce and should not solicit subordinates for contributions for a group gift.
- Contributions to group gifts are **STRICTLY VOLUNTARY** in all circumstances, and no one should be pressured into giving a gift or contributing to a group gift.
- Group gifts of no more than **\$300** for a supervisor.
- Contributions should be for a **NOMINAL** amount (no more than \$10).
- Contractors should **NEVER** be solicited.



Use of Government Resources

Rule: Employees shall protect and conserve Federal property and shall not use it for other than official purposes



5 C.F.R. § 2635.101(b)(9)

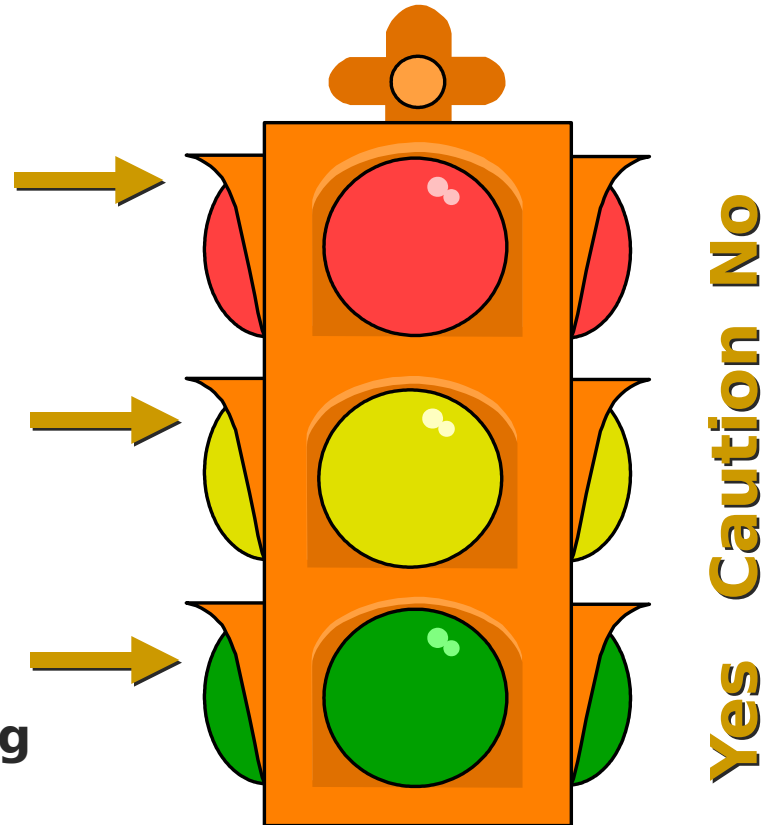
Use of Government Resources

Types of Use:

Prohibited Use:
unrelated to mission

Authorized Use:
supportive of mission
(or limited personal use at
no or minimal cost to

Official Use:
directly related to and
necessary for accomplishing mission



[Use of Government Resources]

- Government Title/Position
- Supplies
- Equipment
- Computer Systems
- Government Time
- Nonpublic Information

[Use of Government Resources]

Misuse of Position:

- You may not use your DoD position for personal gain or for the benefit of others (this includes family, friends, neighbors and individuals that you are affiliated with outside the government).
- You may not solicit other Federal personnel for a personal activity while on duty.

[Use of Government Resources]

Misuse of Position:

- You must avoid improper use of your official title to state or imply official endorsement or sanction of any non-Federal entity, its products, services, or activities.
- Outside the performance of your official duties, your official title may be used only in limited purposes such as providing biographical information.

Use of Government Resources

Official Use: Employees should only use Government resources for official use:

- Perform an honest day's work
- Perform only official duties on official time
- Supervisors must not direct, coerce or encourage subordinates to use official time for non-official duties



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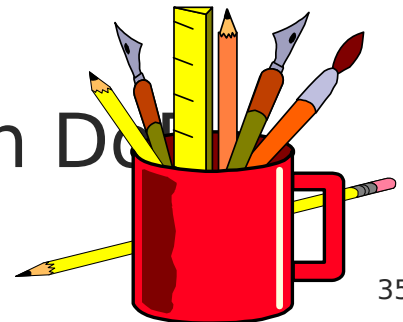
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[Use of Government Resources]

Authorized Use: You are permitted limited use of Government office equipment for personal needs if:

- It does not interfere with the performance of official duties
- It is of reasonable duration or frequency,
- It serves a legitimate Government interest, and
- It does not reflect adversely on DoD



Use of Government Resources

Prohibited Use:

- Where use adversely reflects on DoD
- Where use interferes with employee or office productivity
- Where use is to conduct outside commercial activity

Communication System Prohibitions:

- Pornography
- Chain letters
- Unauthorized fundraising
- Solicitations or sales
- Other inappropriate uses (overburdening DoD's communication system)



[Use of Government Resources]

Non-Public Information: Protect nonpublic information from unauthorized disclosure.

Nonpublic information includes:

- Classified information
- Internal DoD information (e.g., deliberative records)
- Privacy Act-Protected Records (e.g., personnel records)
- Budgetary
- Confidential Procurement Information (e.g., bid, proposal, and source selection)
- Trade Secret

E.g., You may not use non-public information for personal business, teaching, speaking, or writing.

[Non-Federal Travel Support]

- **RULE**: You may ***not*** solicit or accept reimbursement for official travel and related expenses from any source other than the Government.

41 C.F.R., Part 301; 5 C.F.R.,

Part 734

E.g., The sponsor of a conference asks you to speak at the event, and offers to “comp” your hotel room.

[Non-Federal Travel Support]

- **Exception**: An unsolicited offer of travel support (flight or other transportation, hotel, meals and incidental expenses) from a non-Government entity for attendance at a meeting or similar function.

31 U.S.C. § 1353

Note: Known as “1353 travel”

[Non-Federal Travel Support]

Exception: (*cont'd*)

- **Only** an authorized DoD travel official can accept non-Federal Travel support for your official travel, after:
 - Your supervisor agrees that it is in DoD's interest that you attend and there are no appearance issues
 - You receive advanced written approval that includes review by an appropriate ethics official.

Seeking Post-Government Employment

- Seeking a new position outside of government may trigger recusal requirements.
- All employees should receive ethics advice in preparation for seeking & post-government employment.
- Additional rules apply to retiring military officers on terminal or transitional leave—remember you are still active duty until the effective date of your separation/retirement.

Post-Government Service Restrictions

Representational Restrictions: 18 U.S.C. §

207. It is a crime for former DoD personnel to represent--communicate or appear—on behalf of others, with the intent to influence, before the U.S. Government:

- Lifetime Ban: Applies to All except Enlisted Personnel. Permanently bars former personnel who participated personally and substantially in particular matters involving specific parties.

Post-Government Service Restrictions

Representational Restrictions: (*cont'd*)

- 2-Year Ban: Applies to Supervisors. Bars former employees for two-years on matters involving specific parties that were pending under their responsibility during their last year.
- 1-year Cooling Off: Applies to Senior Officials. Bars certain senior officials from coming back to their former agency where they are seeking official action.

Note: “Seniors” are flag and general officers, or civilians with basic rate of pay at or above \$153,105 in 2009.

Post-Government Service Restrictions

- Foreign Entity Ban: Applies to Senior Officials. One year restriction on aiding, advising, or representing a foreign government or political party w/ the intent to influence the U.S.
 - Prohibits even “behind-the-scenes” advice.
- Trade and Treaty Ban: Applies to All except Enlisted personnel. Similar one year restriction applies to aiding and advising another on trade or treaty negotiations that you worked on in your final year of Government service.

Post-Government Service Restrictions

- **Exceptions** to these restrictions include:
 - requests for publicly available documents
 - inquiries re: status of a matter
 - purely social contacts
 - public commentary under certain circumstances—e.g., for scientific and technological information or where the individual has special qualification in a technical discipline
- **Reflection**: These bans are designed to eliminate or reduce the appearance that the Government is being unduly influenced by a former employee.

Post-Government Service Restrictions

- **Other Rules**: There are additional restrictions for procurement officials, retiring military members, and those who worked on treaties or want to assist foreign Governments. Examples:
 - Certain senior officials who had procurement integrity act implicating responsibilities must request a post-government employment letter 30-days before accepting compensation from a DoD Contractor.
 - Military members may commence post-service employment during terminal leave (but not permissive TDY)
 - Procurement Integrity Act prohibits acceptance of compensation for certain procurement officials who worked on contracts valued at or above \$10M.

Post-Government Service Restrictions

- **Ethics Pledge**: Applies additional restrictions to political appointees, who signed the Ethics Pledge.
 - 2-year Cooling Off: Extends the 1-year cooling off period another year.
 - Lobbying Ban: Bans former appointees from lobbying back to the U.S. Government for the duration of the Administration.

[Post-Government Service Restrictions]

Other Restrictions: Applies to All except Enlisted personnel.

- You may not share in compensation for services performed by anyone to represent someone outside the government to the government, if the representation occurred when you were in the government. 18 U.S.C. § 203
- Even where one of the previous bans applies, it does not preclude employment, accepting compensation, or “behind-the-scenes” assistance
- You may never disclose non-public information (classified, sensitive, budgetary, procurement etc)

References

- Specific guidance for DoD personnel may be found on the DoD Standards of Conduct Office (SOCO) website at http://www.dod.mil/dodgc/defense_ethics/
- See in particular:
 - In DoD 5500.7-R, Joint Ethics Regulation
 - “*Employees’ Guide to the Standards of Conduct*,” located on the “SOCO Publications & Handouts” page, under the “Ethics Resource Library” on SOCO’s website.

[Conflict of Interest Statutes]

STATUTE	BRIEF SUMMARY
18 U.S.C. 201 Bribery	Prohibits public officials from seeking, receiving or agreeing to accept anything of value for themselves or others in return for being influenced in an official act; being influenced to aid in the commission of a fraud on the United State; or being induced to do or omit any act in violation of official duty.
18 U.S.C. 203 Representati on	Bars employees from seeking or accepting compensation for representing another before a Federal department, agency or court in matters where the U.S. is a party or has a substantial interest; or receiving money from anyone else's representation.

[Conflict of Interest Statutes]

STATUTE	BRIEF SUMMARY
18 U.S.C. 205 Representat ion	Forbids employees from prosecuting or assisting in the prosecution of claims against the U.S.; or representing another before a Federal department, agency or court in matters where the U.S. is a party or has a substantial interest.
18 U.S.C. 207 Post-Gov Employment	Places certain restrictions on contacting the Federal government after leaving its employment.

[Conflict of Interest Statutes]

STATUTE	BRIEF SUMMARY
18 U.S.C. 208 Financial Conflict of Interest	Bars an employee from participating personally and substantially in an official capacity in any particular Government matter that would have a direct and predictable effect on his own or his imputed financial interests.
18 U.S.C. 209 Dual Compensation	Prohibits employees from receiving any salary or contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government Employee.